

**AGENDA ITEM #9A**

March 11, 2005

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Department of Water Resources' Draft White Paper on Flood Control  
*(For Commission discussion and possible action)*

**RECOMMENDATION:** The Committee should review the recommended strategies of the Draft Flood White Paper and determine if the Commission should submit comments to Director Lester Snow.

**BACKGROUND:**

DWR released a Draft White Paper on Flood Control on January 10, 2005 (see DWR website for full report, [www.water.ca.gov](http://www.water.ca.gov)). The White Paper seeks to address fiscal and legal issues currently threatening the Central Valley flood control system. The White Paper addresses short-term and long-term strategies which will require legislation and constitutional changes.

Recommended Strategies (pages 14-20, White Paper):

**1. Ensure the integrity of existing flood project infrastructure through improved maintenance programs.**

The State should develop a proactive and collaborative process to properly maintain flood control facilities that balances public safety and environmental protection:

- Provide adequate funding and staffing to keep pace with current and projected maintenance requirements.
- Improve levee inspection programs.
- Perform deferred maintenance (e.g. sediment and vegetation removal at critical weirs, pump replacement, maintenance yard repairs).
- Increase staffing and support for State Reclamation Board activities.
- Aggressively form Maintenance Areas to deal with deferred maintenance.

The State should work with environmental groups and agencies to incorporate environmental protection practices into its maintenance programs:

- Develop a framework agreement with resource protection agencies to allow critical maintenance to implement agreed-upon mitigation measures and to provide a process to developing long-term maintenance solutions.
- Develop a "Safe Harbors Program" to effectively manage issues associated with threatened and endangered species.

- Develop a "Mitigation Banking Program" to facilitate the permitting and maintenance of flood control projects.
- Eliminate Fish and Game code criminal liability exposure for individual employees performing within the scope of maintenance work.
- Work with the Army Corps to revise project operations and maintenance manuals to accommodate environmental values that are compatible with the flood control function.

**2. Evaluate the integrity and capability of existing flood control project facilities and rehabilitate those that are economically viable.**

The State should partner with the Army Corps and local agencies to:

- Evaluate the system's levees using current Army Corps standards.
- Rehabilitate levees and other project features found to be deficient
- Modify the system, where required, to provide adequate levels of flood protection and resolve design deficiencies.
- Authorize the Third Phase of the Sacramento River Bank Protection Project.
- Amend the Water Code to address the problem that occurs when local agencies and/or the Army Corps prevent necessary rehabilitation by refusing to share the cost.
- Develop a State program to continuously evaluate system performance and capacity, and to widen the scope of routine inspection.
- Seek congressional and legislative deauthorization of flood control project facilities that are no longer economically viable (e.g. projects with rehabilitation or O&M costs that exceed flood damages avoided).
- Develop a strategic long-term flood control plan that would dictate improvements over time to provide high levels of flood protection for urban areas and to restore ecosystem functionality.

**3. Improve the effectiveness of emergency response programs.**

The State should implement proposals from the 2002 Sacramento and San Joaquin River Basins Comprehensive Study for Enhanced Flood Response and Emergency Preparedness.

- Enhanced detection of flood potential through improved flood forecasting data and procedures.
- Increased lead-time for notifying emergency response agencies.
- Improved local agency response capability.

The specific steps for implementing these proposals include partnership with the Army Corps and local agencies to:

- Increase staffing for flood operations and flood forecasting programs.
- Restore dual path telemetry to river stage, rainfall, and temperature data.
- Implement statewide emergency preparedness coordination and training programs.
- Improve stream gaging and forecasting capabilities.

**4. Create a sustainable fund to support flood management programs.**

California's flood management programs desperately need a sustainable set of funding sources to not only finance flood management activities, but also to provide reimbursement for flood damage caused by inevitable failures in the levee system. A combination of the following sources should be utilized:

- General Fund
- Bond Funds
- Reimbursable funding from the federal government
- Assessment fees from a Central Valley Flood Control Assessment District (see Strategy 6)
- Mandatory state flood insurance fees (see Strategy 5)

To provide for a reliable flood control system in the Central Valley, preliminary estimates indicate the capital improvements on the order of approximately \$2 billion would need to be spent over 10-15 years, and an annual maintenance budget of about \$100 million would be required thereafter.

**5. Examine existing flood insurance requirements and consider the creation of a "California Flood Insurance Fund," a sustainable State insurance fund to compensate property owners for flood damage.** (see page 17 for more detailed description of Strategy 5).

**6. Create a Central Valley Flood Control Assessment District with fee assessment authority to provide adequate flood control protection for the regional benefit of participants.** (see page 18 for a more detailed description of Strategy 6)

**7. Update floodplain maps and provide better flood risk education to the public and to agencies that authorize development.**

DWR could implement several floodplain management tools to reduce the future public risk due to flooding:

- Active implementation of FEMA map modernization and DWR "Awareness Mapping" programs.
- Provide notice to owners of parcels located in flood plains.
- Reinvigorate State's designated floodway program.
- Acquire flood easements.
- Encourage FEMA to establish a mandated flood insurance program for homes behind levees with preferred risk options.

**8. Reduce taxpayer exposure for funding flood disaster claims through legislative or constitutional changes.**

- The Legislation should revise the State's Tort Claims Act (Government Code Section 810 et seq.) to preclude recovery of damages from the State due to flooding, based on any tort theory or cause of action. Add a specific immunity for flood protection activities, similar to those provided for police and correctional activities, Government Code Section 844, and fire protection activities, Section 850.

- The State Constitution should be amended to exempt flood control projects from inverse condemnation liability. Inverse condemnation was the basis for the Paterno decision.
- The State Constitution should be amended to exempt local flood control agencies from the two-thirds voting requirements of Proposition 218.

**9. Implement a multi-objective management approach for floodplains where feasible.**

One way to meet environmental requirements in an era of diminishing funding for flood protection projects is to incorporate flood protection practices into multi-objective floodplain management projects. Multi-objective floodplain management projects will enable flood managers to leverage other sources of funding for flood system maintenance. These projects will result in habitat enhancement rather than simply mitigating for environmental impacts, thereby minimizing environmental concerns. Multi-objective management should be the first choice for flood protection where it is feasible and funding partners can be found.

Depending on the circumstances, multi-objective management of floodplains may yield some or all of these benefits:

- Increased flood protection
- Ecosystem restoration
- Farmland protection
- Groundwater recharge
- Recreation
- Open space preservation

**10. Evaluate potential policies and procedures that may determine the State's capacity to fund levee maintenance, infrastructure improvements and emergency response in the Delta.**

DWR and the California Bay-Delta Authority (CALFED) have committed to carrying out a Comprehensive Program Evaluation (CPE) for the CALFED Delta Levees Program. As part of the CPE or concurrently with it:

- The State should prioritize which islands and levees should be maintained and protection, and to what levels.
- The State should work with local and federal agencies to establish criteria for funding and participation in an emergency response or flood event.
- The State should establish a fund for immediate emergency response in the case of a levee failure and island inundation. Such a fund would provide for rapid response to contain the emergency and prevent cascading failures to adjacent islands, and allow time for the coordination of a full, long-term response.

*Note: The CPE is discussed more fully in a separate staff report*

**COMMISSION AGRICULTURE AND LEVEES COMMITTEE  
RECOMMENDATIONS:**

- The Committee generally supports the efforts of DWR to address the shortfalls of the current flood control program, including funding issues, regulatory issues, and emergency response.
- The Committee recommended that Strategy #2 focus on the integrity and capability of flood control projects, and not the constraints of economic viability.
- The Committee recommended that Strategies #6 and #8 are "unknowns" and should be evaluated where specific text is available.
- The Committee suggested that fiscal partners be sought to implement Strategy #10.

Attachment:

- DPC Letter to DWR after Jones Tract flooding

Sent: August 13, 2004

Lester Snow, Executive Director  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236

Subject: Delta Protection Commission Comments on Delta Levee Emergencies

Dear Director Snow:

At the July 22, 2004 meeting of the Delta Protection Commission, the Commission discussed the recent levee break on Jones Tract and the Commission's current, adopted policies on levees (Land Use and Resource Management Plan for the Primary Zone of the Delta).

The Commission adopted the following recommendations to assist in prevention, mitigate potential damages, and address the system-wide response to another event like the recent levee break on Jones Tract:

- Reclamation Districts should ensure that entities with infrastructure on an island pay an appropriate assessment to help maintain each island's levees.  
*Comment: This could increase the local funds available to match State maintenance dollars.*
- Create a dedicated source of annual maintenance funding from the State, to allow for longer term planning for annual levee maintenance.  
*Comment: This would allow for better planning and implementation of ongoing levee maintenance.*
- Provide adequate financial resources to the emergency fund at the State to allow for appropriate levels in the event of a levee breach, including flood fight, repair, and restoration in the event of a levee break.  
*Comment: This would allow immediate deployment of resources needed to minimize damages and costs associated with a levee break without the delay such as that experienced at Jones Tract.*
- Propose a clear plan to treat any Delta levee break as a "State Emergency" allowing for immediate deployment of the resources of the State.  
*Comment: This would allow immediate deployment of resources needed to minimize damages and costs associated with a levee break and remove some of the after-the-fact wrangling.*

- Negotiate pre-agreements with each Reclamation District and the Department of Water Resources to allow access to an island to allow Department of Water Resources to repair and restore the levees and drainage facilities.  
*Comment: This would shorten the time needed for State response.*
- Negotiate pre-agreements between the Department of Water Resources and appropriate contractors for carrying out the needed work and providing the necessary materials.  
*Comment: This would speed up the flood fight and levee repair process, and minimize damage and costs.*
- Develop and implement a crop insurance program for Delta farmers.  
*Comment: This would offset losses to individuals and the economic "ripple effect" of crop devastation such as that suffered on Jones Tract.*
- Levee program implementing agencies (Department of Water Resources, Department of Fish and Game, and the Corps of Engineers, and the Delta Protection Commission) should prepare a plan to fund and implement the program to bring Delta levees to the PL84-99 standard for agricultural lands.  
*Comment: This would increase Delta levee stability.*

The Commission also supports efforts, at all levels, to reuse dredged material for levee maintenance, and supports efforts to "streamline" or better coordinate the regulatory process associated with maintenance of the Delta levees.

Thank you for your continued interest in the Delta as a critical element of the State's water system. Please let me know if you would like to discuss the matters in this letter further.

Sincerely,

Margit Aramburu  
Executive Director